

DOCKET FILE COPY ORIGINAL
BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of)
)
Arkansas Cable Telecommunications) EB Docket No. 06-53
Association; Comcast of Arkansas, Inc.;)
Buford Communications I, L.P. d/b/a)
Alliance Communications Network;)
WEHCO Video, Inc.; and TCA Cable) EB-05-MD-004
Partners d/b/a Cox Communications,)
)
Complainants,)
)
v.)
)
Entergy Arkansas, Inc.,)
)
Respondent.)

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Federal Communications Commission
Office of Secretary

To: Office of the Secretary
Attn: The Honorable Arthur I. Steinberg
Administrative Law Judge

**OPPOSITION TO COMPLAINANTS' MOTION FOR LEAVE
TO SUBMIT A RESPONSE TO ENTERGY'S REPLY**

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1. Pursuant to Section 1.294(b) of the Rules of the Federal Communications Commission ("FCC" or "Commission"), 47 C.F.R. § 1.294(b), Entergy Arkansas, Inc. ("EAI") hereby submits its Opposition to Complainants' Motion for Leave to Submit a Response to EAI's Reply in support of its Motion to Enlarge, Change and Delete Issues Presented in the Hearing Designation Order in the above-captioned proceeding.¹ As set forth herein, Complainants have failed to

¹ Complainants' Motion for Leave to Submit Response to Entergy's Reply in Support of its Motion to Enlarge, Change, and Delete Issues in the Hearing Designation Order, EB Docket No. 06-53, File No. EB-05-MD-004 (filed May 25, 2006) ("Complainants' Motion"); Reply to

demonstrate good cause or otherwise provide an adequate basis for deviating from the Commission's rules and well-established procedures regarding motions practice.² Accordingly, Complainants' Motion must be denied and Complainants' accompanying proffered Response must be rejected from inclusion or consideration in this proceeding.

2. Pursuant to Section 1.294(c) of the Commission's Rules, 47 C.F.R. § 1.294(c), EAI's Reply was limited to the matters raised in the Oppositions to the Motion to Enlarge, and the alternate revision to the phrasing of Issue 4(c) submitted by EAI was in direct response to the specific concerns raised in the Enforcement Bureau's Opposition.³ However, as EAI made clear in its Reply, this alternate revision does not in any way change the relief requested in the Motion to Enlarge nor does it represent any change in EAI's position.⁴ Rather, this alternate revision serves only to more precisely reflect EAI's long-standing position on this issue as stated in the Motion to Enlarge⁵ – a characterization of the issue that the Bureau explicitly accepted as correct.⁶

Oppositions to Respondent's Motion to Enlarge, Change and Delete Issues Presented in the Hearing Designation Order, EB Docket No. 06-53, File No. EB-05-MD-004 (filed May 19, 2006) ("Reply"); Entergy Arkansas, Inc. Motion to Enlarge, Change and Delete Issues Presented in the Hearing Designation Order, EB Docket No. 06-53, File No. EB-05-MD-004 (filed May 4, 2006) ("Motion to Enlarge").

² See, e.g., 47 C.F.R. § 1.229(d); 47 C.F.R. §§ 1.294(c) and (d).

³ Opposition of the Enforcement Bureau to Respondent's Motion to Enlarge, Change and Delete Issues Presented in the Hearing Designation Order, EB Docket No. 06-53, File No. EB-05-MD-004 (filed May 15, 2006) ("Bureau's Opposition"); See also Opposition to Respondent's Motion to Enlarge, Change and Delete Issues Presented in the Hearing Designation Order, EB Docket No. 06-53, File No. EB-05-MD-004 (filed May 12, 2006) ("Complainants' Opposition").

⁴ See Reply at 3 – 4.

⁵ *Id.* Complainants allege that this is a "new, changed position." Complainants' Motion at 2. However, as the Complainants themselves acknowledged in their Opposition, EAI presented its position at least as far back as the Parties' filing last year of their Joint Statement of the Issues (filed August 29, 2005). See, e.g., Complainants' Opposition at 7.

⁶ Bureau's Opposition at 3.

3. In short, EAI's Reply does not contain any issue or position that had not already been set forth in its Motion to Enlarge and which could have – and should have – been addressed by Complainants in their Opposition in accordance with Section 1.294(c) of the Commission's Rules. With this Motion, Complainants now seek an additional opportunity, in disregard of the Commission's procedural rules and practice, to present arguments that should properly have been presented two weeks ago and thus deny EAI its rightful opportunity, as the moving party, to present a reply. Complainants' request would therefore unfairly prejudice EAI, undermine the Commission's procedural rules, and frustrate the Commission's express purpose in designating this hearing “to arrive at a just, equitable, and expeditious resolution” of this matter.⁷ For these reasons, Complainants' Motion must be denied and Complainants' proffered Response must be excluded from consideration.

4. In the event that Complainants' Motion is granted, EAI respectfully requests that, pursuant to the presiding officer's authority under Section 1.294(d) of the Commission's Rules, 47 C.F.R. § 1.294(d), EAI be allowed to submit a reply to Complainants' Response, as would normally be its right as the moving party under the Commission's rules if the Complainants' submission had been timely filed.⁸ The acceptance of a reply by EAI would be the only way to mitigate the prejudicial impact of a grant of Complainants' Motion. Therefore, concurrent with this Opposition, EAI is filing a separate Reply to Complainants' Response. If the Complainants' Motion is denied and their Response rejected, then EAI's Reply to Complainants' Response may likewise be excluded from consideration. However, if Complainants' Motion is granted, then

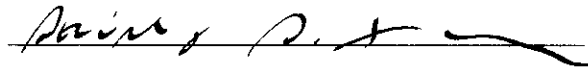
⁷ *Arkansas Cable Telecomms. Ass'n et al. v. Entergy Arkansas, Inc.*, EB Docket No. 06-53, File No. EB-05-MD-004, Hearing Designation Order, DA 06-494 (rel. Mar. 2, 2006), Erratum (rel. Mar. 6, 2006), 71 Fed. Reg. 20105 (April 19, 2006) (“HDO”) at ¶ 6.

⁸ See 47 C.F.R. § 1.229(d); 47 C.F.R. § 1.294(c)(1).

EAI's Reply must also be accepted into the record in order to maintain the integrity of the proceeding.

WHEREFORE, THE PREMISES CONSIDERED, Entergy Arkansas, Inc. respectfully requests that the Administrative Law Judge take action on the instant Opposition consistent with the views expressed herein.

Respectfully submitted,



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Attorneys for Entergy Arkansas, Inc.

Dated: June 1, 2006

CERTIFICATE OF SERVICE

I, David Rines, do hereby certify that on this 1st day of June 2006, a single copy (unless otherwise noted) of the foregoing "Opposition to Complainants' Motion for Leave to Submit a Response to Entergy's Reply" was delivered to the following by the method indicated:

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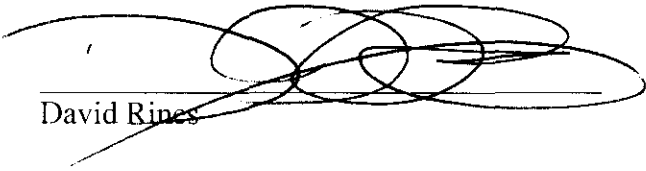
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